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ABSTRACT

In 1989, Walter E. Kimm, III applied for a position as an admissions representative at Brookdale Community College (BCC), in New Jersey. As a result of BCC's nonresponsiveness, he reapplied, using a slightly modified resume, as "Suzy Ming Cheng." Whereas "Suzy Ming Cheng" was invited to an interview for the position, Kimm was sent a letter of refusal very shortly after the first part of the screening process. Courtroom testimony later indicated that an interview was sought from "Cheng" to determine whether the position's minimal criteria were satisfied. Kimm attended the interview scheduled for "Cheng" and persuaded the interview committee to grant him an interview. BCC later declined to offer Kimm the position. In December, 1990, Kimm filed an amended complaint with the Division on Civil Rights, alleging that BCC and its hiring committee discriminated against him based on race, color, and sex and denied him employment in violation of state law. An administrative law judge found that BCC excluded Kimm from its selection process solely because of his race and sex, noting that the Committee admitted that it ignored the applications of eight qualified Caucasian applicants in favor of various minority applicants with inferior qualification. The initial and final decisions of the judges are discussed. (A chronology of events and 35 references are appended.) (MAB)

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A SMALL EXAMPLE OF REVERSE DISCRIMINATION

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INTRODUCTION

"A Small Example of Reverse Discrimination" seems a relevant and timely topic in the Spring of 1995: Debate of affirmative action pros and cons is ongoing; polarities and attempts at reassessment abound in our land. But, the topic's timeliness is not central here. Rather, I chose this topic because it related to my studies last semester; and because it fell squarely within my known and immediate world of the community colleges of New Jersey. Also, to someone with a taste for mathematical precision, its interesting smallness and apparent neatness had great appeal.

As with most human events, this endeavor of mine has expanded: in material, in time, in scope, in depth. It remains to be seen whether the expansion is a matter of becoming more complex or just more complicated!

Initially, my intention was to use solely published, hence very public, sources for exploration. The case --- Walter E. Kimm, III, Complainant v. Brookdale Community College, et al., was initiated by complaints Kimm filed with the Division on Civil Rights. It proceeded through referral to and hearings by the Office of Administrative Law, and terminated with the eventual awarding of damages to Kimm by the Director of the Division on Civil Rights.

In my search for published material (e.g., newspaper articles) and for less easily available public documents (e.g., an affirmative action report, submitted by Brookdale Community College to the no longer existent Department of Higher Education), I began to talk with all sorts of people who were involved with the case in one way or another. And so, to library research alone, there has been added the seasoning of many conversations.

PRELIMINARIES

Brookdale Community College has consistently sought to make diversity and the absence of discrimination high priorities within the academic, social, and cultural community that is the heart of the County College of Monmouth.

On September 17, 1987, The Brookdale Community College Board of Trustees approved the affirmative action plan entitled **Brookdale Community College Program to Eliminate Barriers to Affirmative Action.** It was this document that was *"submitted to Dr. T. Edward Hollander, Chancellor, New Jersey Department of Higher Education"*, and which remained in effect until June of 1990. Subject to its 1990 revision, with added statistical data, it became the **Program to Eliminate Barriers to Affirmative Action** at Brookdale, and remains in effect today.

The document operant during the initial phase of the Kimm case was very similar to its successor; and each contained goal/timetable percent projections and listings by class, for every employee category, with the county standard percent clearly displayed. The charts illuminated the discussion in the document's Policy Statement: *"Goals and timetables have been developed in an attempt to develop a staff which is reflective of the county work force."*

Well before September 1987, Brookdale's Affirmative Action Office had worked on a set of written guidelines, the **Standard Selection Procedure** (P-7)[•] , intended to be an *"equitable and non-discriminatory"* listing which details each step of the process to be followed in hiring. They believed this **Standard Selection Procedure** to be a key document: often referred to; frequently fine-tuned and disseminated afresh; prominently featured in the two Brookdale affirmative action plans. It must be noted that the *"procedure is offered as technical assistance in filling of vacant positions"* and is *"designed to assist both the screening committee and the supervisor in selecting the most suitable and qualified candidate."*

[•] Please see Appendix II: P-1 through P-16, R-1 through R-4 are Documents in Evidence from the hearing documented in TA and TB.

The Affirmative Action Office announced that the document constituted *"an attempt to conform to Affirmative Action requirements in taking positive (affirmative) steps to overcome the effects of past and/or unintentional discrimination. Affirmative Action occurs by ensuring that the practices of those responsible in matter of employment are non-discriminatory and ensuring that additional efforts to recruit, hire, and promote qualified members of groups who were formerly excluded from the job market are made."*

Let us examine the six closely spaced pages devoted to the **Standard Selection Procedure** in the 1987 affirmative action plan. Here, the importance of documentation is cited and specific selection steps are listed. There are descriptions of screening committee selection, appointment, and interaction with the Affirmative Action Director, including the following relevant paragraph on reviewing applicants' qualifications to determine those eligible for actual committee review:

"The supervisor (or the screening committee) will review the resumes and/or applications. This review will be done together with the Director of Affirmative Action. The preestablished end level qualifications will be used to screen out any candidates who do not meet the entry level qualifications. Entry level standards will be applied equally to all candidates. All qualified minorities will be interviewed. (Emphasis added)

The first time I heard of the Kimm case was thanks to a library search; and the New Jersey Law Journal article that I then read turned out to be, in totality, the Summary of the case as detailed in 94 N.J.A.R. 2d (CRT):*

WALTER E. KIMM, III,
Complainant,
v.
BROOKDALE COMMUNITY COLLEGE, ELIZABETH LAMUREY, ROBERT MARX and T. EDWARD HOLLANDER,[1] CHANCELLOR OF HIGHER EDUCATION FOR THE STATE OF NEW JERSEY
Respondents

Civil Rights

OAL Docket No. CRT 5745-91
Agency Docket No. EN31JB-29418

Initial Decision: September 17, 1992
Final Agency Decision: February 2, 1994

SUMMARY
Labor and Employment ---Employment Discrimination

College's employment policy of excluding Caucasian males demonstrates unlawful discriminatory motive when not predicated on approved affirmative action.

The Division on Civil Rights awarded damages to a college job applicant, holding that a college was guilty of job discrimination based on its action of offering to interview a fictitious Asian-American woman based on a resume that was identical to a previously rejected one from a Caucasian male applicant.

Respondent Brookdale Community College advertised for a college admissions representative. Complainant Walter Kimm, a Caucasian male, applied for the position and received no response. He sent another application using the name "Suzy Ming Cheng" with the same background.

On December 18,1989, Walter E. Kimm, III of Spring Lake, New Jersey, submitted a newly revised resume (R-2), complete with cover letter (P-3), to Personnel Services, Brookdale Community College. He was answering a detailed advertisement (P-13) in the **Asbury Park Press** for a college admissions representative, with the responsibilities and requirements for the job fairly spelled out. The December 13 Help Wanted entry was explicit: *"...We require a Bachelor's degree, although a Master's degree in Student Personnel Services or two years of community outreach experience is*

* For clarity and continuity, I have included excerpts throughout.

desirable. Previous admissions experience would be a plus, but not essential. ..." It went on to cite the need for a car, for evening and week-end hours; it listed duties as well as the annual salary range.

This was not the first time that Kimm had applied for a position at Brookdale, having done so ----- by his own estimate ---- at least three times previously. These earlier attempts had included answering advertisements for "Admissions Representative" and for "Assistant Director, Educational Opportunity Fund Program" (P-1, P-2). It troubled him a great deal that these earlier letters had never been answered or acknowledged in any way. Kimm says that he began to doubt whether his applications had even been read by anyone at the College. And perhaps it was this frustration and doubt that motivated him to attempt a double-barreled attack. this time around. (In truth, I do not know how much real desire or hope Kimm had, at this juncture, of obtaining the advertised position. And, if he intended his actions solely to build a test case, in order to carefully demonstrate that the College excluded Caucasian males from consideration for employment, then ought he not to have documented his intention to do so ---- before the fact, that is?)

Having recently paid approximately $150 for a professional reworking of his resume, he decided to use the new chronologically correct resume (R-2) to apply for the admissions position for himself, and to modify the old resume into the vita of a fictitious Chinese woman to make this job search a test case. So, on the very next day, he submitted a second response to the December 13 advertisement: The letter and resume (P-4) mailed to Brookdale on the 19th bore the name "Suzy Ming Cheng" in lieu of his own, and the address of a relative in Springfield. (I was told later, by a Brookdale College administrator, that there had been at least one telephone conversation with "Ms. Cheng" in Springfield!)

The detailed profiles for the two resumes were "essentially" the same: Kimm had put a new heading onto his old resume. He had also changed the names of the two employers in mortgage banking; but, the two positions listed were the same, and the

employers were fully comparable. Kimm's new vita showed his current real estate job; the older one predated this, hence did not.

The academic histories cited were the same, except for the non-essential addendum "President of Montclair State Asian Student Society" on the "Cheng" document. And the six other items --- employment by John P. Connors, P.C,. and all five entries under the heading Political Experience --- were absolutely, totally identical. It was surprising to learn that this was noticed neither by the Brookdale College Director of Affirmative Action nor by the Screening Committee Chair, both of whom had to read each and every one of the applications in order to select those meeting the position qualifications (i.e., in the first step of the screening process described previously).

> Brookdale sent Kimm a letter informing him that he did not meet their qualifications, but sent a letter inviting "Cheng" to an interview.[94 NJAR 2d (CRT)]

Whereas "Suzy Ming Cheng" was invited to interview for the position, Brookdale sent Kimm a letter (P-5) of refusal, dated February 23, 1990, very shortly after the first step of the screening process had taken place. The letter told him: *"While your resume was quite good, the committee felt you did not meet the specific requirements of the position." (P-5)* Yet, in more than one of the "steps" listed in the **Standard Selection Procedure**, it is stated that both notification of the final candidate and the sending of letters of rejection must await the completion of the entire review process.

After some scheduling postponements, the "Cheng" interview was set for March 5, 1990; and Walter Kimm prepared to attend the interview that his credentials had earned for "Suzy Ming Cheng."

> Kimm appeared at the interview scheduled for "Cheng" and convinced the interview committee to grant him an interview. After the interview, Brookdale declined to offer Kimm the position.[94 NJAR 2d (CRT)]

Once the applications were closed on December 22, 1989, the prescribed steps of the Standard Selection Procedure ensued. Almost one hundred people had responded to the December 13 advertisement within the allowed time frame. The Screening

Committee Chair and the Affirmative Action Director jointly eliminated approximately half --- for failing to meet the minimal previously established criteria --- leaving a qualified sub-pool of approximately fifty applicants. These were, potentially, eligible for interview.

In the second step of the screening process, the four committee members and their Chair, with the Affirmative Action Director as advisor, reviewed and selected --- on the basis of merit and job fit --- the candidates for interview. Next, there was an Affirmative Action Office review of those rejected by the committee at the second step, so as to explicitly retrieve the minority candidates among them, and to promote any and all minimally qualified minority candidates into the group selected for interview. (The procedure by which this step was performed is obscure, and was extensively explored at the subsequent Office of Administrative Law hearing.)

In this particular pre-employment screening, the Affirmative Action Director intervened not only at the usual and expected second step, but, essentially, at the preliminary first step as well. She moved the Suzy Ming Cheng application into the minimally qualified group --- and hence, automatically, into the group selected for interview --- as a result of insufficient data: No one could tell, with the few dates cited on the resume, whether "Cheng" had, indeed, amassed the "two years of community outreach experience" which, along with a Bachelor's degree", were supposedly the minimal requirements for the advertised position. So, an interview was sought to check whether the minimal criteria were satisfied by "Cheng". (For detailed testimony on this, please see pp. 153-4 of TA, the Transcript of Proceedings for the July 14, 1992, Office of Administrative Law hearing on the case.)

The "usual" intervention here of the Affirmation Action Director, at the "expected" second step, involved moving five minimally qualified minority candidate (besides "Cheng") into the interview pool " based on potential status and qualifications. "This is reported in a letter (P-11), to the Division on Civil Rights, responding to a request for information (also cited in TA 148). There are listed the names of two black

women, one Hispanic man and two black men. I found it interesting to search out the interview scores these five candidates subsequently received from the committee:

40.2, 28.0, 28.2, 37.2, 26.8

Is it not interesting that some of these five people, who had all been eliminated from interview consideration by the screening committee, should now score so well in the eyes of the same committee? Truly, it does show the added opportunity at work, while it raises more questions anew.

Much testimony focused on whether Kimm's record satisfied the apparent minimal requirement of "two years of networking experience", and eventually demonstrated that it had exceeded the two years demanded. So, attention was paid to the "two years" both in the screening and in the subsequent litigation; and it was only recently that I read over the crucial sentence in advertisement (P-13) responsible for spelling out the requirements:

"*We require a Bachelor's degree, although a Master's degree in Student Personnel Services or two years of community outreach experience is desirable.*"

To me, this sentence says that the touted "two years" is in the desirable category, along with the graduate work in "Student Personnel Services", and "previous admissions experience", rather than in the required category. The generalized misunderstanding becomes less surprising when it emerges that the Screening Committee Chair also believed that the Master's in Student Personnel Services was required.

THE INTERVIEW: PROCESS & SPECIFICS

The Screening Committee Chair and Affirmative Action Director could have reacted in a variety of ways when the committee was confronted by the sudden arrival of the Caucasian Walter Kimm, well-dressed in "traditional male clothing." They had been expecting to interview a Chinese woman. Instead, Kimm walked in, without knocking, before the committee was ready for its next interview. What they did do, eventually, as decided by the Affirmative Action Director, was to give Kimm what purported to be the same sort of interview as that received by each of the other candidates.

Later testimony brought out how very much Kimm had frightened some of them and upset most of them; and, apparently, this was less by what he said or did, and more by how he "seemed" to them. The fears of some seemed to be by association with a recent Post Office shooting. Assuredly, all this was reflected in how he was evaluated and in the comments on the rating sheets. Later testimony brought out how very unfair the whole interview and its assessment had been.

It so happened that the "Cheng"/Kimm interview was the very last of the total of nineteen that were held; and these had been stretched out over a period of "two to three weeks" because of committee members' scheduling conflicts. Yet, despite these extensive arrangements, one of the committee members had missed six of the nineteen interviews.

The content and format of the committee's questions were rigidly established for the purpose of uniformity, and the same was true of the interview evaluation component. So, each candidate interviewed was asked the same list of questions (P-10), apportioned in the same way among the five questioners, And each interviewed candidate was to be rated on each of nine listed traits by the committee members, using an individual rating and comment sheet (P-9 & P-10). Then, the five scores, ranging from a possible minimum of 14 to a possible maximum of 41, were averaged to obtain a "committee" ranking for each candidate (P-8). If the testimony is followed, it becomes clear that the conclusions of the screening committee were to be individually arrived at, rather than by discussion and eventual consensus among the members.

Many conflicting aspects emerged in the hearing testimony (TA & TB) about Kimm's interview by the screening committee. Kimm believed that he had been given a full interview and that he had performed well therein. Not one of the screening committee members agreed with him, and his ratings from the committee members ranged from 14 to 28, with a consequent committee average of 21.8. The more typical among these gave him a 3 or 4 (highest) score in the areas of "Appearance/Grooming" and of "Flexibility of Time/Scheduling" while he received a 2 or 1 (lowest) in the other areas.

The very lowest individual score of 14 was assigned to Kimm by a committee member who rated each trait as 1-minus, ---- and yet, this was an honest person who later testified that Kimm deserved to have been rated high on those two traits, and he could not explain why he, himself, had assigned the ratings he had.

Kimm received the lowest score in the very skewed distribution of scores:

Score	Under 23	23 to 29	29 to 35	35 to 41
Frequency	1	6	1	11

It is a strange score to be considered consistent with the Brookdale letter of refusal written on the day immediately after the interview.

AFTERMATH

On March 6, 1990, a letter of rejection was addressed to Kim/"Cheng" based on the interview the previous day. The earlier February 23 rejection letter had stated *"....the committee felt that you did not meet the specific requirements of the position."* The March 6 one advised *"While your interview was quite good and your qualifications did meet the requirements of the position, but the screening committee felt there were several candidates that more closely met our needs."*

> Kimm filed a complaint with the Division on Civil Rights, alleging that Brookdale and its hiring committee discriminated against him based on his race and sex and denied him employment in violation of state law, in retaliation for his actions. [94 NJAR 2d (CRT)]

On March 9, 1990, Kimm filed a Verified Complaint with the Division on Civil Rights, in the State of New Jersey Department of Law and Public Safety. This charged the respondent, Brookdale Community College, with *"unlawful discrimination <u>with respect to refusal to hire the complainant</u> because of race, creed, color, national origin, ancestry, age, liability, in violation of N.J.S.A. 10:5-4, and 10:5-12 (d) of the New Jersey Law Against Discrimination."* (Emphasis added.) It is reasonably clear to me, that, had Kimm limited himself <u>solely</u> to that complaint, he would not have won his case.

In May of 1990, a brief Division on Civil Rights fact-finding conference took place as a follow-up to the Verified Complaint. Walter Kimm attended alone. However, soon thereafter, he asked a close friend to become involved. This was a highly relevant step, for the good friend was John P. Connors, Jr., Esq., a young man with an active legal practice which specialized in personal injury cases. Connors' serious entrance onto the scene made an incredible difference --- and the later amended document he composed demonstrates it well.

The Amended Verified Complaint, filed on December 4, 1990, adds T. Edward Hollander, Chancellor of Higher Education for the State of New Jersey to the list of respondents at Brookdale. The Complaint states that petitioner Kimm was *"the victim of discrimination perpetrated by the respondents based upon his race, color and sex,"* a

broader accusation than the earlier one. It also states that "..... *the respondents consciously, deliberately, willfully, intentionally and contumaciously acted in violation of Section 10:5-4 and 10:5-12 of the New Jersey Statutes Annotated, and the 14th and 8th Amendments of the United States Constitution by engaging in a consistent pattern of discrimination in the screening of applicants for the position of Admissions Representative at Brookdale Community College."* (Emphasis added.)

The essential point is that the discrimination took place in the screening process itself, rather than in any failure to hire. And it is this shift that so clearly resonated through the two days of hearings, and was so amply documented and justified in the subsequent legal decisions of the Kimm case.

A MINOR POSTSCRIPT

Over the course of my investigation, throughout my perusal of documents and interwoven with my conversations with community college colleagues, with specialists in human resources and employment law, with personnel at the Division on Civil Rights, with the plaintiff and his counsel, I became aware of how my own view of the Kimm story was changing.

At first reading of the **Summary,** when I initially got to the screening committee's interview of Kimm/"Cheng", I had been aghast. Why had they not refused to see him, let alone agree to interview him, when the "Cheng" application which had brought him to said interview was essentially fraudulent? I viewed the plaintiff as someone engaged in subterfuge.

It seemed to me that a point-blank and outraged committee refusal to see or interview would have protected Brookdale Community College more effectively from suit than the apparent cooperation the committee exhibited.

The committee's decision to interview Kimm seemed to me to be a rash one, if made without consulting the College counsel. And finally, no matter how defective the

interview process, both Kimm's interview score and his second letter of rejection seemed, tactically, extremely unfortunate. ccHow much safer to have ranked him in the middle! How much safer to write something like the following as refusal, in lieu of the contradictory letter that was sent: "We appreciate your interest in ____. Unfortunately, the great number and high qualifications of the candidates made this a highly competitive screening process."

Very slowly, as I continued to learn more about the case and the players, I began to really understand what "protected activity" means and why it is needed.

THE DECISIONS

> An administrative law judge (ALJ) found that Brookdale excluded Kimm from its selection process solely because of his race and sex, noting that the Committee admitted that it ignored the applications of eight qualified Caucasian makes in favor of various minority applicants with inferior qualifications. The ALJ found that Kimm was qualified to be interviewed for the admissions representative position.
>
> The ALJ rejected Brookdale's argument that its affirmative action policy was approved by the Department of Higher Education and that it had the authority to guarantee interviews to the exclusion of qualified Caucasian applicants. The ALJ found that Kimm's interview was a "sham" and rejected Brookdale's contention that Kimm received a fair score based entirely on the interview itself. The ALJ determined that Kimm's act of submitting nearly identical resumes under different names was a protected activity under state law and that Brookdale employees knew that Kimm's actions were protected. The ALJ concluded that Kimm was subjected to unlawful discrimination and unlawful reprisal for having engaged in a protected activity. The ALJ awarded damages and assessed a penalty against Brookdale.[94 NJAR 2d (CRT)]

Following transfer of the Kimm case to the Office of Administrative Law in June, a prehearing conference was scheduled for October and then followed by two days of hearings before Daniel B. McKeown, Administrative Law Judge. The hearings were transcribed, and hence 406 pages (with very few errors) record every detail of the testimony of July 14 & 15, 1992 (TA & TB).

Very early in the proceedings, the motion was successfully made to dismiss the Complaint (i.e., the Amended Complaint) against the Chancellor of Higher Education. The supporting brief, citing federal and state cases, also presented some discussion of the frequently referred to Board of Higher Education "policy" (R-1),.frequently referred to throughout and especially by the College. Since this exhibit was the linch-pin of the Brookdale defense, and support for its voluntary affirmative action plan, the development further weakened Brookdale's case.

> The Director of the Division on Civil Rights adopted the ALJ's recommendation and awarded damages to Kimm, holding that he demonstrated that there was a discriminatory motive that was a substantive or determinative factor in Brookdale's employment policy and that he was subjected to unlawful reprisal under state law. There was sufficient evidence that Kimm's interview scores were negatively affected by his submission of the two applications and by his complaints at the interview about discrimination both protected activities. Brookdale's voluntary affirmative action plan was invalid

> because it was not predicated on a demonstrable manifest imbalance reflecting underrepresentation of minorities or women in segregated job categories. The Director awarded damages for Kimm's pain and suffering and penalties against Brookdale.[94 NJAR 2d (CRT)]

The incredibly detailed description and analysis of the Initial Decision by Judge McKeown was exceeded only by the detailed narrative of review, analysis and law that was the eventual Final Decision by C. Gregory Stewart, Director of the Division on Civil Rights.

The comments and minor modifications that appear here are very finely honed, even in the less important matters. For example, the required vs desirable dichotomy is noted, based on the advertisement (P-13). Also discussed is the earlier confusion between resumes (R-2 & P-4), as to which one failed to contain sufficient dates. Other errors are carefully corrected. Indeed, of greatest import is the legal analysis. The use and misuse of the Department of Higher Education's site review report (R-3) is mentioned. The Director notes that the report "*acknowledges the Brookdale policy by which its affirmative action officer will recommend including qualified minority candidates for consideration if she finds that the screening committee's recommendations are limited. Again, nothing in the report suggests an approval of the Brookdale policy to interview all minimally qualified minorities and females, to the exclusion of minimally qualified Caucasian males.*" (emphasis added.)

I studied the Director's discussion of federal and New Jersey statutes and case law, but do not feel competent to diagram this content. I did understand what distinguishes a voluntary affirmative action plan, and the four-part analysis used to establish that a *prima facie* case of unlawful discrimination has taken place, also the impact on this of the presentation of direct evidence of discrimination. And anyone can understand what the Director wrote: "*The record clearly establishes that the complainant's race and sex were substantive and determinate factors in the respondents' decision not to grant him an interview.*"

In studying the New Jersey Law Against Discrimination (NJSA 10:5-1 et seq.), I became aware of the history of our state's legislation on civil rights. I was impressed.

APPENDIX I
PARTIAL CHRONOLOGY

9-17-87	Brookdale Community College Board of Trustees approves revised **"Brookdale Community College Program to Eliminate Barriers to Affirmative Action",** which is disseminated to the College community, and also submitted to Dr. T. Edward Hollander, Chancellor, New Jersey Department of Higher Education, as requested
Early 1988	Walter E. Kimm, III, applies for advertised Brookdale Community College position of Admissions Representative (per conversation with Kimm)
9-7-88	Kimm applies for advertised Brookdale Community College position of Assistant Director, Educational Opportunity Fund Program (letter contains an error)
9-13-88	Kimm resubmits application (with correction to letter)
12-7-88	Kimm applies (cover letter, resume) for advertised Brookdale Community College position of Admissions Representative
11-16-89	Brookdale Community College Board approves policy revisions 3.9007, **"Affirmative Action",** and 3.9002, "Equal **Employment & Education Opportunity"**
12-13-89	Brookdale Community College advertisement in **Asbury Park Press** for College Admissions Representative (with deadline: 12-22-89)
12-18-89	Response to advertisement by Walter E. Kimm, III
12-19-89	Response to advertisement by "Suzy Ming Cheng"
2-8-90	Brookdale Community College letter inviting "Suzy Ming Cheng" to interview on 2-12-90 (subsequently changed to 3-5-90)
2-23-90	Brookdale Community College letter of refusal to Walter E. Kimm, III (refusal at first step)

3-5-90	Walter E. Kimm, III, as "Suzy Ming Cheng", attends interview at Brookdale Community College
3-6-90	Brookdale Community College letter of refusal to Walter E. Kimm, III, in aftermath of Kimm's interview as "Cheng" (refusal at interview step)
3-7-90	Memo from Affirmative Action Director to various administrators at Brookdale Community College updating the Brookdale Community College **Standard Selection Procedure** (which exists in many earlier forms)
3-9-90	Kimm files original **Verified Complaint** with the Division on Civil Rights
5-19-90	Division on Civil Rights conducts brief fact-finding conference on the **Verified Complaint** (which Kimm attended alone)
12-4-90	With the aid of his attorney, John P. Connors, Jr., .Kimm files an **Amended Verified Complaint** with the Division on Civil Rights
6-10-91	Case transferred to Office of Administrative Law as a contested case
October '91	Prehearing Conferrence
7-14,15-92	Administrative Law Judge conducts hearings
7-16-92	Office of Administrative Law record closed
9-17-92	Initial Decision, Judge Daniel B. McKeown, Administrative Law Judge
2-2-94	Final Agency Decision, C. Gregory Stewart, Director, Division on Civil Rights

APPENDIX II
SOURCES

- **State of New Jersey Office of Administrative Law**
  OAL Docket No. CRT 05745-91S
  Transcript of Proceedings, Walter E. Kimm, III, Petitioner
  Before Judge Daniel B. McKeown, Administrative Law Judge
  TA Tuesday, July 14, 1992 (190 pages)
  TB Wednesday, July 15, 1992 (216 pages)

- **Documents in Evidence**, OAL DKT. NO.CRT 5745-91
  - P-1 Letter, September 7, 1988 (Kimm)
  - P-2 Letter, September 13, 1988 (Kimm)
  - P-3 Letter, December 18, 1989 (Kimm)
  - P-4 Letter, December 19, 1989 ("Cheng")
  - P-5 Letter, February 23, 1990 (Brookdale refusal re Kimm's resume)
  - P-6 Letter, March 6, 1990 (Brookdale refusal after "Cheng"/Kimm interview)
  - P-7 **Standard Selection Procedure** with cover memorandum of transmittal to Brookdale administrators
  - P-8 Rating Scores for all interviewed candidates
  - P-9 Individual rating sheet for "Cheng"/Kimm with score of 21 and comments
  - P-10 Interview questions
  - P-11 Letter, May 16,1990 (re: candidates originally rejected, then granted interviews)
  - P-12 Rating sheet (with score of 14 and comments)
  - P-13 Advertisement of December 13, 1989
  - P-14 Rating sheet (with score of 28 and comments)
  - P-15 Rating sheet (with score of 24 and comments)
  - P-16 Resumes of qualified Caucasian male candidates
  - R-1 Board of Higher Education Memorandum, January 10, 1990, and January 19 ,1990, Resolution, on *1987 Affirmative Action Status Report*
  - R-2 Resume (Kimm)
  - R-3 Site visit review (for visit to Brookdale Community College, by DHE Office of Community Colleges staff in February, 1990)
  - R-4 Letter, September 7, 1990 (summary of site visit findings)

- **Affirmative Action Plan by and for the New Jersey Department of Higher Education,** January 9, 1979
- **Amendment to the Affirmative Action Plan,** February 26, 1981
- **Brookdale Community College Program to Eliminate Barriers to Affirmative Action,** approved by Board of Trustees September 17, 1987
- **November 15, 1989 Memo: Proposed Board Policies** (including proposed revised policy on Affirmative Action
- **Affirmative Action Report, 1990 Update: Program to Eliminate Barriers to Affirmative Action at Brookdale,** revision approved by Board of Trustees, June 28, 1990

- **Verified Complaint,** Kimm vs Brookdale Community College, notarized March 9, 1990
- **Amended Verified Complaint,** Kimm vs Brookdale et al, notarized November 27,1990
  Brief of Chancellor of Higher Education in Support of Motion to Dismiss the Complaint, dated 4/25/92, with attachments
- **"Minority preference attacked"**, by S. DelCamp, Asbury Park Press, October 11, 1992
- **"College to weigh appeal on bias ruling",** by C. Federical, Asbury Park Press September 2, 1993
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